IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3122 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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AKHTARBHAI RAZAKBHAI MEMON

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 3122 of 2001

MR MM TIRMIZI for Petitioner No. 1

MR ND GOHIL APP for Respondents

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 25/07/2002

ORAL JUDGEMENT

1. Rule. Mr. ND Gohil, learned APP appears and waives the service of notice of rule on behalf of respondents.

2. In this petition which is filed u/s. 482 of the Code of Criminal Procedure ('the Code' for short), petitioner against whom Criminal Case is registered vide CR No.III- 149 of 2000 with Pardi Police Station for commission of the alleged offence u/s. 70(a) and 81 of the Bombay Prohibition Act ('the Act' for short) on the accusation that he has supplied to the main accused the rotten gur recovered from him, has prayed to quash and set aside the said complaint.

3. Having heard Mr. Tirmizi, learned advocate for the petitioner and Mr. ND Gohil learned APP for the respondents and on having perusal of the averments made in the memo of the petition, grounds set out therein and the impugned FIR, it appears that the main accused from whom contraband article, i.e., rotten gur was recovered has stated that he has purchased the said rotten gur from the present petitioner. However, during the course of the investigation, no contraband article i.e., rotten gur was found from his shop or godown. Therefore, the present petitioner is shown as an accused in the said CR merely on the basis of the statement of the main accused.

4. Besides this, while drawing panchnama the main accused has stated that he has purchased the contraband article i.e., rotten gur from the shop of the petitioner but the said rotten gur was not found from the shop of the petitioner.

5. In view of this, there is no prima facie case against the present petitioner for commission of the alleged offence u/s. 70(a) and 81 of the Act and therefore the FIR lodged qua the petitioner deserves to be quashed and set aside.

6. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned FIR having CR. No.III-149/2000 registereed at Pardi Police Station is quashed and set aside qua the petitioner only. Rule is made absolute.

7. It may be made clear that in the instant case, the FIR is quashed and set aside qua the petitioner only on the basis of the set of facts and circumstances of the present case and hence this judgment shall not be cited as a precedent in any other case.

(A.M. Kapadia, J.)

(karan)